

Panaji, 11th February, 1993 (Magha 22, 1914)

SERIES II No. 46

OFFICIAL



GAZETTE

GOVERNMENT OF GOA

NOTE: There is one Supplementary issue to the Official Gazette, Series II No. 45 dated 4-2-1993 as follows:

- 1) Supplement dated 4-2-1993 from pages 885 to 908 regarding Notifications from Revenue Department.

GOVERNMENT OF GOA

Home (General) Department

Order

No. 1/4/86-HD (G)

Read: Government Order No. 1/4/86-HD (G) dated 11th January, 1993.

Consequent upon taking over of all the buildings previously belonging to the Ex-Police Montepio by the Government and which have been placed under the control of the Inspector General of Police, vide Government Order referred above, Government is pleased to order that the wards of allottees of residential accommodation who are working in the Police shall continue to enjoy the facilities subject to the deduction of rent at the rates fixed by the Government as applicable to other employees of the Government who have been provided residential accommodation.

By order and in the name of the Governor of Goa.

G. P. Chimulkar, Under Secretary (Home).

Panaji, 3rd February, 1993.

Revenue Department

Notification

No. 22/241/92-RD

Whereas, by Government Notification No. 22/241/92-RD dated 9-7-1992 published in the Official Gazette, Series II, No. 18 dated 30-7-1992 and in two Newspapers (i) Navhind Times dated 20-7-1992 and (ii) Tarun Bharat dated 20-7-1992, it was notified under Section 6 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "The said Act") that the land specified in the schedule appended to the said Notification (hereinafter referred to as the "said land") was needed for public purpose viz. Land Acquisition for the construction of Left Bank Main Canal of Tillari Irrigation Project from ch. 24.08 kms. to 25.83 kms. in Colvale and Camurlim Villages of Bardez Taluka.

And whereas in the opinion of the Government of Goa (hereinafter referred to as the "Government"), a portion of the said land as specified in the appended Schedule hereto is not required for the aforesaid purpose.

Now, therefore, the Government is pleased to declare under sub-section (1) of section 48 of the said Act that it has withdrawn from acquisition the portion of the said land more particularly described in the Schedule appended hereto for the aforesaid public purpose and that the aforesaid Government Notification shall be deemed to be modified to that

extent so far as it relates to the said land. The persons interested in the said land, may lodge to the Special Land Acquisition Officer (North), Morod, Mapusa within a period of thirty days from the date of this Notification, Claims under Sub-Section (2) of Section 48 of the Said Act for the damages suffered by them in consequence of the notice or of any proceedings thereunder and for costs reasonably incurred by them in prosecution of the proceedings under the said Act relating to the said Land.

A plan of the land, shall be available for inspection in the office of the Spl. Land Acquisition Officer (North) Morod, Mapusa for a period of thirty days from the date of publication of this Notification.

SCHEDULE

(Description of the said land)

Taluka: Bardez		Village: Colvale
Survey No./ Sub-Div. No.	Names of the persons believed to be interested	Approximate area in sq. mtr.
1	2	3
206/6 part	O: Harichandra Narayan Naik. Subhadra Arjun Mandrekar. T: Laxman Zilu Varkhakar.	225
206/7 part	O: Harichandra Narayan Naik. Subhadra Arjun Mandrekar. T: Bhikaji Laxman Parsekar.	5150
206/8 part	O: Not Known.	1600
203/1 part	O: Harichandra Narayan Naik. Pandurang Subha Mayekar. Subhadra Arjun Mandrekar. Vishwanath A. Maulingkar. Satish H. Dhekne.	925
Total		7900

By order and in the name of the Governor of Goa.

B. N. Bhat, Under Secretary (Revenue).

Panaji, December, 1992.

Notification

No. 22/144/92-RD

Whereas by Government Notification No. 22/144/92-RD dated 18-8-1992 published on pages 526 to 527 of Series II, No. 24 of the Official Gazette dated 10-9-1992 and in two newspapers (i) Navhind Times dated 25-8-1992 and in (ii) Gomantak dated 25-8-1992, it was notified under section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act"), that the land specified in the schedule appended to the said Notification (hereinafter referred to as the "said land") was likely to be needed for public purpose viz. Land Acquisition for construction of new B. G. Railway line between Roha and Mangalore in Barcem village of Quepem Taluka and Loliem and Nagarcem Palolem villages of Canacona Taluka.

And whereas the Government of Goa (hereinafter referred to as the "Government"), being of the opinion that the

acquisition of the said land is urgently necessary, hereby applies the provisions of sub-section (1) and sub-section (4) of section 17 of the said Act and directs that the Collector appointed under paragraph 2 below, shall at any time on the expiry of fifteen days from the date of the publication of the notice relating to the said land under sub-section (1) of section 9 of the said Act, take possession of the said land.

Now, therefore, the Government hereby declares under the provisions of section 6 of the said Act, that the said land is required for the public purpose specified above.

2. The Government also hereby appoints under clause (c) of section 3 of the said Act, the Special Land Acquisition Officer (Konkan Railway Corporation Ltd.), South Goa, Davorlim Road, Salcete-Goa, to perform the functions of the Collector for all proceedings hereinafter to be taken in respect of the said land and directs him under section 7 of the said Act to take order for the acquisition of the said land.

3. A plan of the said land can be inspected at the office of the Special Land Acquisition Officer (Konkan Railway Corporation Ltd.), South Goa at Amey Guest house, Davorlim road, Salcete-Goa, till the award is made under section 11.

SCHEDULE

(Description of the said land)

Taluka: Quepem

Village: Barcem

Survey No./ Sub. Div. No.	Names of the persons believed to be interested	Approximate area in sq. mts.
1	2	3
128/1 part	O/Pangolo Bodco Gaunkar. O/Dholo Kuro Gaunkar.	860
128/3 part	O/Malu Bhamta Vellif. O/Shanu Gurkho Vellif. O/Zargo Thulo Vellif. O/Sonu Ram Vellif. O/Ganesh Babu Vellif. O/Janu Govind Vellif.	115

Taluka: Canacona

Village: Loliem

207/5 part	O/Vishwanath Loliemkar. T/Inachno Fernandes.	375
207/3 part	O/Cazimiro Nazareth D'Souza.	2475
208/1 part	O/Narayan Bhiku Prabhu Desai. O/Prembai Pundalik Prabhu Desai. O/Manorama Gopal Prabhu Desai. T/Domingo Lopes.	600
208/2 part	O/Vishwambar Parot Desai.	300
208/7 part	O/Franquinho Barreto.	1150
208/8 part	O/Vasudev Damodar Prabhu Desai.	825
208/9 part	O/Cipriano Corte.	1150
208/4 part	O/Jayawanta Krishna Prabhu Desai. T/Vasudev Damodar Prabhu Desai.	200

Taluka: Canacona

Village: Nagarcem Palolem

194/6 part	O/Uttam Ram Gavod Desai. O/Mukund Shanu Bhairali. O/Bhiku Putu Bhairali. O/Dayawati Bazru Bhairali. O/Govt. of India, Ministry of Surface Transport. T/Dharmu Pandu Fal Desai.	325
194/8 part	O/Ganba Bhagade Desai. O/Vithal Jiblo Desai. O/Datta Bhagdu Desai. O/Govt. of India, Ministry of Surface Transport. T/Jiu Dhumo Bhiker.	250
195/1 part	O/Yeso Bhiku Gaoker. O/Rajendra Babu Gaoker. O/Shivanand Babu Gaoker. O/Dayanand Shanker Gaoker. O/Govind Fakir Gaoker. O/Govt. of India, Ministry of Surface Transport. T/Fati Yesu Bhiker.	250
195/2 part	O/Govt. of Daman and Diu.	50

1	2	3
195/3 part	O/Govt. of India, Ministry of Surface Transport.	325
195/4 part	O/Ramakant Shripad Panandikar. O/Ganasham Anant Nagarshenkar. T/Vithoba Manju Bandekar.	475
196/1 part	O/Comunidade of Nagarcem Palolem. O/Govt. of India, Ministry of Surface Transport. O/Smt. Hirabai Durga Gaintonde. O/Smt. Minaxi Suresh Kakodekar. O/Heirs of Balchandra Pandurangh.	250
Total		9975

By order and in the name of the Governor of Goa.

B. N. Bhat, Under Secretary (Revenue).

Panaji, 18th January, 1993.

Corrigendum

No. 22/99/91-RD

Sub: — Land Acquisition for construction of new Railways B. G. line between Roha and Mangalore in Loliem and Pinguinim villages of Canacona Taluka.

Read: Notification No. 22/99/91-RD dated 20-1-1992 published at pages 881-883, Series II of Official Gazette (Extraordinary) No. 49 dated 6-3-1992 and two local newspapers namely Herald dated 24-1-1992 and Rashtramat dated 25-1-1992.

In the Government Notification referred to above the following existing entries in the schedule are modified as indicated below:

EXISTING ENTRIES

Taluka: Canacona

Village: Loliem

Sr. No./ Sub. Div. No.	Names of the persons believed to be interested	Area published in sq. mts.
7/10 part	O/Rosalina Dias. House, Margaret D'Souza. O/Jose Dias.	3140
TO BE READ AS		
7/9	O/Narayan Laxman Prabhu Agrasani.	1700
7/10 part	O/Rosalina Dias House Margaret D'Souza. O/Jose Dias.	1440

By order and in the name of the Governor of Goa.

B. N. Bhat, Under Secretary (Revenue).

Panaji, 19th January, 1993.

Corrigendum

No. 22/100/91-RD

Sub: — Land Acquisition for construction of new Railways B. G. line at Chauri village in Canacona Taluka of Karwar - Madgaon section.

Read: Notification No. 22/100/91-RD, dated 4-11-1991 published at pages 668-677 Series II of Official Gazette (Extraordinary No. 3) dated 5-12-1991 and two newspapers namely Navhind Times dated 11-11-1991 and Gomantak dated 12-11-1991.

In the Government Notification referred to above the following existing entries in the schedule are modified as indicated below:

EXISTING ENTRIES

Taluka: Canacona

Village: Chauri

Survey No./ Sub. Div. No.	Names of the persons believed to be interested	Area published in sq. mts.
1	2	3
165/8 part	O/Shanta Purushottam Naik Gaonkar.	63
165/11 part	O/Divakar Shantaram Kindalkar.	6

TO BE READ AS

Taluka: Canacona

Village: Chauri

Survey No./ Sub. Div. No.	Names of the persons believed to be interested	Area published in sq. mts.
1	2	3
165/8 part	O/Shanta Purushottam Naik Gaonkar.	6
165/11 part	O/Divakar Shantaram Kindalkar.	63

Total area may be read as 246448 instead of 246919 sq. mts. in view of Government Notification No. 22/100/91-RD dated 5-5-1992, published in Official Gazette, Series II, No. 8—Supplement dated 21-5-1992 at page 135.

By order and in the name of the Governor of Goa.

B. N. Bhat, Under Secretary (Revenue).

Panaji, 19th January, 1993.

Corrigendum

No. 22/168/91-RD

Sub:—Land Acquisition for construction of new Railways B. G. line between Roha & Mangalore in village Cortalim of Mormugao Taluka.

Read: Notification No. 22/168/91-RD dated 10-6-1992 published at pages 215-221 Series II of Official Gazette No. 13, dated 25-6-1992 and two local newspapers namely Herald dated 20-6-1992 and Rashtramat dated 21-6-1992.

Consequent upon the partition of some survey numbers into new sub-divisions, in the Government Notification referred to above the following existing entries in the schedule are modified as indicated below:

EXISTING ENTRIES

Taluka: Mormugao

Village: Cortalim

Sr. No./ Sub. Div. No.	Name of the person believed to be interested	Area pulished in sq. mts.
149/2 part	O/Aniceto Salvador Rodrigues.	8000

TO BE READ AS

Sr. No./ Sub. Div. No.	Names of the persons believed to be interested	Revised area in sq. mts.
149/2 part	O/Aniceto Salvador Rodrigues.	675
149/5 part	O/Maria Aninho Fernandes.	1725
149/6 part	O/Oriando Faria Rodrigues.	5600

By order and in the name of the Governor of Goa.

B. N. Bhat, Under Secretary (Revenue).

Panaji, 19th January, 1993.

Department of Mines

Order

No. 96/439/88-Mines

In exercise of the powers conferred by sub-section (2) of section 8 of the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act 67 of 1957), read with sub-rule (2) of rule 24A of the Mineral Concession Rules, 1960, the Government of Goa hereby renews the mining lease with the previous approval of the Central Government in favour of M/s. Sociedade Timblo Irmaos Ltd. (hereinafter referred to as 'The Lessee'), for undertaking mining operations for Manganese Ore in the area shown in the schedule appended to this Order for a period of 10 years subject to the special conditions as laid down hereunder to be incorporated in the lease deed which shall be executed by the Lessee and the Governor of Goa:—

1. The Lessee shall carry out at his expenses such experiments on remedial measures as directed by the Director of Industries and Mines, Government of Goa or any other officer authorised by him and shall report the result to him.
2. The Lessee shall allow, co-operate with and provide all facilities to the experts authorised by the Government to carry out research work or experiments on remedial measures in his leased area or dumping sites.
3. The Lessee shall at his own expenses undertake remedial measures to the satisfaction of the Director of Industries and Mines, Government of Goa (hereinafter called Director of Industries and Mines) to prevent damage to the agricultural or forest lands due to the flow of mining rejection or wastes or slimes resulting from his mining operations, within a reasonable time or such time as may be directed by the Director of Industries and Mines.
4. If the Director of Industries and Mines or the officer authorised by him in this behalf, is of the opinion that any active dump causes or will cause damage to the agricultural or forest land, which cannot be prevented, he may by order in writing, direct to stop further dumping on such dump. No such order shall however be made unless the Lessee is afforded a reasonable opportunity of stating his case.
5. The Lessee shall undertake to rehabilitate the land left over after the mining operations are concluded, through soil conservation measures to the satisfaction of the Government and within such reasonable time as the Government may by an order in writing specify.
6. In the event of the failure on the part of the Lessee to undertake the aforesaid measures within the stipulated period, the Government without prejudice to any other action it may take against the Lessee, may take the requisite steps to rehabilitate the said land and recover the expenses incurred for such work from the Lessee as arrears of land revenue.
7. The Lessee shall undertake necessary measures to consolidate the dumps by planting suitable species of grass, legumes, or trees, etc. as may be directed by the Director of Industries and Mines, from time to time.
8. The Lessee shall undertake to plant elsewhere within the leased area at least as many trees as are removed during the mining operations.
9. The Lessee shall not dump or allow it to be dumped any rejects at any point within a distance of 100 metres from the bank of any river or nallah and 50 metres from the lease boundary, except with the previous written permission of the Government.
10. The Lessee shall not discharge or allow it to be discharged any muddy and slimy water from the beneficiation/washing plant and shall provide settling tanks of proper design and adequate capacity for settling solids so that only decanted water may overflow.
11. The Lessee shall undertake the work of desilting of drains and streams outside the leased area periodically to prevent them from being choked and shall provide check dams to facilitate the settling of suspended solids.

12. The Lessee shall take necessary steps not to overload or allow it to be overloaded the trucks carrying the ore/rejects from the leased area to any loading point or stockyard.
13. The Lessee shall make and pay such reasonable compensation to the owner or tenant or occupant of the land or property situated in the leased area or in the vicinity of the leased area which is damaged or injured or disturbed as a result of mining operations or due to the flow of mining rejects, slimes or wastes from the mine as the case may be, as may be assessed by the Collector, South Goa in accordance with the law in force on the subject and shall indemnify or keep indemnified fully and completely the Government against all claims which may be made by any person or persons in respect of any such damage, injury or disturbance and all costs and expenses in connection therewith.
14. The Lessee shall obtain surface rights or obtain consent of the owner/occupier of land before entering the land for commencement of mining operations in the area.

M/s. Sociedade Timblo Irmaos Ltd., shall on peril of revocation of this Order execute within a period of 180 days from the date of communication of this Order a deed of lease as contemplated under rule 31 of the Mineral Concession Rules, 1960.

SCHEDULE

District	Taluka	Village	T. C. No.	Area in hectares
South Goa	Sanguem	Verlem	1 of 1941	64.5000 Ha.

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Mines).

Panaji, 2nd January, 1991.

Order

No. 96/512/88-Mines

In exercise of the powers conferred by sub-section (2) of section 8 of the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act 67 of 1957), read with sub-rule (2) of rule 24A of the Mineral Concession Rules, 1960, the Government of Goa hereby renews the mining lease with the previous approval of the Central Government in favour of M/s. Sociedade Timblo Irmaos Ltd. (hereinafter referred to as 'The Lessee'), for undertaking mining operations for Iron Ore in the area shown in the schedule appended to this Order for a period of 10 years subject to the special conditions as laid down hereunder to be incorporated in the lease deed which shall be executed by the Lessee and the Governor of Goa:—

1. The Lessee shall carry out at his expenses such experiments on remedial measures as directed by the Director of Industries and Mines, Government of Goa or any other officer authorised by him and shall report the result to him.
2. The Lessee shall allow, co-operate with and provide all facilities to the experts authorised by the Government to carry out research work or experiments on remedial measures in his leased area or dumping sites.
3. The Lessee shall at his own expenses undertake remedial measures to the satisfaction of the Director of Industries and Mines, Government of Goa (hereinafter called Director of Industries and Mines) to prevent damage to the agricultural or forest lands due to the flow of mining rejection or wastes or slimes resulting from his mining operations, within a reasonable time or such time as may be directed by the Director of Industries and Mines.
4. If the Director of Industries and Mines or the officer authorised by him in this behalf, is of the opinion that

any active dump causes or will cause damage to the agricultural or forest land, which cannot be prevented, he may by order in writing, direct to stop further dumping on such dump. No such order shall however be made unless the Lessee is afforded a reasonable opportunity of stating his case.

5. The Lessee shall undertake to rehabilitate the land left over after the mining operations are concluded, through soil conservation measures to the satisfaction of the Government and within such reasonable time as the Government may by an order in writing specify.
6. In the event of the failure on the part of the Lessee to undertake the aforesaid measures within the stipulated period, the Government without prejudice to any other action it may take against the Lessee, may take the requisite steps to rehabilitate the said land and recover the expenses incurred for such work from the Lessee as arrears of land revenue.
7. The Lessee shall undertake necessary measures to consolidate the dumps by planting suitable species of grass, legumes, or trees, etc. as may be directed by the Director of Industries and Mines, from time to time.
8. The Lessee shall undertake to plant elsewhere within the leased area at least as many trees as are removed during the mining operations.
9. The Lessee shall not dump or allow it to be dumped any rejects at any point within a distance of 100 metres from the bank of any river or nallah and 50 metres from the lease boundary, except with the previous written permission of the Government.
10. The Lessee shall not discharge or allow it to be discharged any muddy and slimy water from the beneficiation/washing plant and shall provide settling tanks of proper design and adequate capacity for settling solids so that only decanted water may overflow.
11. The Lessee shall undertake the work of desilting of drains and streams outside the leased area periodically to prevent them from being choked and shall provide check dams to facilitate the settling of suspended solids.
12. The Lessee shall take necessary steps not to overload or allow it to be overloaded the trucks carrying the ore/rejects from the leased area to any loading point or stockyard.
13. The Lessee shall make and pay such reasonable compensation to the owner or tenant or occupant of the land or property situated in the leased area or in the vicinity of the leased area which is damaged or injured or disturbed as a result of mining operations or due to the flow of mining rejects, slimes or wastes from the mine as the case may be, as may be assessed by the Collector, South Goa in accordance with the law in force on the subject and shall indemnify or keep indemnified fully and completely the Government against all claims which may be made by any person or persons in respect of any such damage, injury or disturbance and all costs and expenses in connection therewith.
14. The Lessee shall obtain surface rights or obtain consent of the owner/occupier of land before entering the land for commencement of mining operations in the area.

M/s. Sociedade Timblo Irmaos Ltd., shall on peril of revocation of this Order execute within a period of 180 days from the date of communication of this Order a deed of lease as contemplated under rule 31 of the Mineral Concession Rules, 1960.

SCHEDULE

District	Taluka	Village	T. C. No.	Area in hectares
North Goa	Bicholim	Cudnem	14 of 1953	73.7340 Ha.

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Mines).

Panaji, 2nd January, 1991.

Order

No. 96/446/88-Mines

In exercise of the powers conferred by sub-section (2) of section 8 of the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act 67 of 1957), read with sub-rule (2) of rule 24A of the Mineral Concession Rules, 1960, the Government of Goa hereby renews the mining lease with the previous approval of the Central Government in favour of M/s. Sociedade Timblo Irmaos Ltd. (hereinafter referred to as 'The Lessee'), for undertaking mining operations for Iron Ore in the area shown in the schedule appended to this order for a period of 10 years subject to the special conditions as laid down hereunder to be incorporated in the lease deed which shall be executed by the Lessee and the Governor of Goa:—

1. The Lessee shall carry out at his expenses such experiments on remedial measures as directed by the Director of Industries and Mines, Government of Goa or any other officer authorised by him and shall report the result to him.
2. The Lessee shall allow, co-operate with and provide all facilities to the experts authorised by the Government to carry out research work or experiment on remedial measures in his leased area or dumping sites.
3. The Lessee shall at his own expenses undertake remedial measures to the satisfaction of the Director of Industries and Mines, Government of Goa (hereinafter called Director of Industries and Mines) to prevent damage to the agricultural or forest lands due to the flow of mining rejection or wastes or slimes resulting from his mining operations, within a reasonable time or such time as may be directed by the Director of Industries and Mines.
4. If the Director of Industries and Mines or the officer authorised by him in this behalf, is of the opinion that any active dump causes or will cause damage to the agricultural or forest land, which cannot be prevented, he may by order in writing, direct to stop further dumping on such dump. No such order shall however be made unless the Lessee is afforded a reasonable opportunity of stating his case.
5. The Lessee shall undertake to rehabilitate the land left over after the mining operations are concluded, through soil conservation measures to the satisfaction of the Government and within such reasonable time as the Government may by an order in writing specify.
6. In the event of the failure on the part of the Lessee to undertake the aforesaid measures within the stipulated period, the Government without prejudice to any other action it may take against the Lessee, may take the requisite steps to rehabilitate the said land and recover the expenses incurred for such work from the Lessee as arrears of land revenue.
7. The Lessee shall undertake necessary measures to consolidate the dumps by planting suitable species of grass, legumes, or trees, etc. as may be directed by the Director of Industries and Mines, from time to time.
8. The Lessee shall undertake to plant elsewhere within the leased area at least as many trees as are removed during the mining operations.
9. The Lessee shall not dump or allow it to be dumped any rejects at any point within a distance of 100 metres from the bank of any river or nallah and 50 metres from the lease boundary, except with the previous written permission of the Government.
10. The Lessee shall not discharge or allow it to be discharged any muddy and slimy water from the beneficiation/washing plant and shall provide settling tanks of proper design and adequate capacity for settling solids so that only decanted water may overflow.
11. The Lessee shall undertake the work of desilting of drains and streams outside the leased area periodically to prevent them from being choked and shall provide check dams to facilitate the settling of suspended solids.
12. The Lessee shall take necessary steps not to overload or allow it to be overloaded the trucks carrying the ore/rejects from the leased area to any loading point or stockyard.
13. The Lessee shall make and pay such reasonable compensation to the owner or tenant or occupant of the

land or property situated in the leased area or in the vicinity of the leased area which is damaged or injured or disturbed as a result of mining operations or due to the flow of mining rejects, slimes or wastes from the mine as the case may be, as may be assessed by the Collector, South Goa in accordance with the law in force on the subject and shall indemnify or keep indemnified fully and completely the Government against all claims which may be made by any person or persons in respect of any such damage, injury or disturbance and all costs and expenses in connection therewith.

14. The Lessee shall obtain surface rights or obtain consent of the owner/occupier of land before entering the land for commencement of mining operations in the area.

M/s. Sociedade Timblo Irmaos Ltd., shall on peril of revocation of this Order execute within a period of 180 days from the date of communication of this Order a deed of lease as contemplated under rule 31 of the Mineral Concession Rules, 1960.

SCHEDULE

District	Taluka	Village	T. C. No.	Area in hectares
South Goa	Sanguem	Shigao	87 of 1953	50.4000 Ha.

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Mines).

Panaji, 2nd January, 1991.

Order

No. 96/163/87-Mines

In exercise of the powers conferred by sub-section (2) of section 8 of the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act 67 of 1957), read with sub-rule (2) of rule 24A of the Mineral Concession Rules, 1960, the Government of Goa hereby renews the mining lease with the previous approval of the Central Government in favour of M/s. Raphael Mines (hereinafter referred to as 'The Lessee'), for undertaking mining operations for Iron Ore in the area shown in the schedule appended to this Order for a period of 10 years subject to the special conditions as laid down hereunder to be incorporated in the lease deed which shall be executed by the Lessee and the Governor of Goa:—

1. The Lessee shall carry out at his expenses such experiments on remedial measures as directed by the Director of Industries and Mines, Government of Goa or any other officer authorised by him and shall report the result to him.
2. The Lessee shall allow, co-operate with and provide all facilities to the experts authorised by the Government to carry out research work or experiments on remedial measures in his leased area or dumping sites.
3. The Lessee shall, at his own expenses undertake remedial measures to the satisfaction of the Director of Industries and Mines, Government of Goa (hereinafter called Director of Industries and Mines) to prevent damage to the agricultural or forest lands due to the flow of mining rejection or wastes or slimes resulting from his mining operations, within a reasonable time or such time as may be directed by the Director of Industries and Mines.
4. If the Director of Industries and Mines or the officer authorised by him in this behalf, is of the opinion that any active dump causes or will cause damage to the agricultural or forest land, which cannot be prevented, he may by order in writing, direct to stop further dumping on such dump. No such order shall however be made unless the Lessee is afforded a reasonable opportunity of stating his case.
5. The Lessee shall undertake to rehabilitate the land left over after the mining operations are concluded, through soil conservation measures to the satisfaction

of the Government and within such reasonable time as the Government may by an order in writing specify.

6. In the event of the failure on the part of the Lessee to undertake the aforesaid measures within the stipulated period, the Government without prejudice to any other action it may take against the Lessee, may take the requisite steps to rehabilitate the said land and recover the expenses incurred for such work from the Lessee as arrears of land revenue.
7. The Lessee shall undertake necessary measures to consolidate the dumps by planting suitable species of grass, legumes, or trees, etc. as may be directed by the Director of Industries and Mines, from time to time.
8. The Lessee shall undertake to plant elsewhere within the leased area at least as many trees as are removed during the mining operations.
9. The Lessee shall not dump or allow it to be dumped any rejects at any point within a distance of 100 metres from the bank of any river or nallah and 50 metres from the lease boundary, except with the previous written permission of the Government.
10. The Lessee shall not discharge or allow it to be discharged any muddy and slimy water from the beneficiation/washing plant and shall provide settling tanks of proper design and adequate capacity for settling solids so that only decanted water may overflow.
11. The Lessee shall undertake the work of desilting of drains and streams outside the leased area periodically to prevent them from being choked and shall provide check dams to facilitate the settling of suspended solids.
12. The Lessee shall take necessary steps not to overload or allow it to be overloaded the trucks carrying the ore/rejects from the leased area to any loading point or stockyard.
13. The Lessee shall make and pay such reasonable compensation to the owner or tenant or occupant of the land or property situated in the leased area or in the vicinity of the leased area which is damaged or injured or disturbed as a result of mining operations or due to the flow of mining rejects, slimes or wastes from the mine as the case may be, as may be assessed by the Collector, South Goa in accordance with the law in force on the subject and shall indemnify or keep indemnified fully and completely the Government against all claims which may be made by any person or persons in respect of any such damage, injury or disturbance and all costs and expenses in connection therewith.
14. The Lessee shall obtain surface rights or obtain consent of the owner/occupier of land before entering the land for commencement of mining operations in the area.

M/s. Raphael Mines shall on peril of revocation of this Order execute within a period of 180 days from the date of communication of this Order a deed of lease as contemplated under rule 31 of the Mineral Concession Rules, 1960.

SCHEDULE

District	Taluka	Village	T. C. No.	Area in hectares
South Goa	Sanguem	Calem	6 of 1941	83,2000 Ha.

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Joint Secretary (Mines).

Panaji, 8th July, 1991.

Department of Labour

Notification

No. 28/53/84-LAB

Whereas the Government of Goa is satisfied that public interest so requires that the industry engaged in the production, supply and distribution of petroleum and petroleum

products (hereinafter called as the "said industry"), should be declared as public utility service for the purposes of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter called the "said Act").

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of section 2 of the said Act, the Government of Goa hereby declares the said industry to be a public utility service for the purposes of the said Act, for a period of six months with effect from the date of publication of this notification in the Official Gazette.

By order and in the name of the Governor of Goa.

D. N. Accavade, Under Secretary (Labour).

Panaji, 27th January, 1993.

Finance (Expenditure) Department

Order

No. 6/1/92-Fin (Exp)

On the recommendations of the Goa Public Service Commission, the Government is pleased to promote, with immediate effect, the following Accountants of the Common Accounts Cadre to the post of Assistant Accounts Officer in the pay scale of Rs. 2000-60-2300-EB-75-3200 on officiating basis and post them in the departments shown against each:—

Sl. No.	Name of the official and present posting	Posted on promotion as
1	2	3
1.	Shri L. P. Chavan, Accountant Goa State Backward Class, Development Corporation, Panaji.	A.A.O., Office of Commissioner of Labour, Panaji against the newly created post.
2.	Shri Madhusudan Naik, Accountant, Div. XXIII P.W.D., Patto Panaji.	A.A.O., Goa Housing Board, Porvorim (on deputation basis).
3.	Shri Fausto S. B. Teles, Accountant, Sales Tax Office, Panaji.	A.A.O., Directorate of Accounts, Panaji against the vacant post.
4.	Shri S. P. Dhungat, Accountant, Goa Medical College, Bambolim.	A.A.O., Directorate of Accounts, Panaji against the vacant post.
5.	Shri Vinayak A. Naik, Accountant, Dte. of Food & Drugs Administration, Panaji.	A.A.O., Govt. Printing Press, Panaji vice Shri Diogo Fernandes, A.A.O. transferred.
6.	Shri R. R. Prabhushastri, Accountant, Electricity Dept. Div. IV, Aquem Margao.	A.A.O., Goa University Taleigao Plateau (on deputation basis).
7.	Shri Dattaram Salgaonkar, Accountant, Dte. of Social Welfare, Panaji.	A.A.O., Directorate of Sports & Youth Affairs against the vacant post.

The promoted officers shall be on probation for a period of two years in the first instance.

The Officers shall exercise an option in regard to pay fixation in terms of Govt. of India's O.M. No. F.7/1/80-Estt. P. I dated 26-9-81 within one month from the date of issue of this order.

The deployment of S/Shri Madhusudan Naik and R. R. Prabhushastri in the Goa Housing Board and Goa University respectively shall be regulated as per standard terms of deputation as contained in the O.M. No. 13/4/74-PER dated 10-10-1990.

The Goa Housing Board and Goa University shall be liable to pay to Government Leave salary and pension contribution of S/Shri Naik and Prabhushastri respectively at the prescribed rate. S/Shri Naik & Prabhushastri will be entitled to the benefit of surrender of leave and expenditure towards this and the payment of compensatory allowance including Dearness

Allowance shall be borne by the Goa Housing Board and Goa University respectively.

The Government is further pleased to order the following transfer and postings of the A.A.O.s of the Common Accounts Cadre as indicated against each:—

Sl. No.	Name of the officer and present posting	Posted as
1	2	3
1.	Shri Menino Dias, A.A.O., Directorate of Accounts, Panaji.	A.A.O., Irrigation Department, Panaji against the vacant post.
2.	Shri Diogo Fernandes, A.A.O., Govt. Printing Press, Panaji.	Directorate of Accounts, Panaji vice Shri Menino Dias, A.A.O. transferred.

Shri Diogo Fernandes shall move first.

On their joining new assignment, the officers shall send CTC/joining report to Finance (Exp.) Department for record immediately.

By order and in the name of the Governor of Goa.

Smt. Prabha Chandran, Under Secretary (Finance Exp.).

Panaji, 2nd February, 1993.

Office of the Commissioner of Sales Tax

Notification

No. CST/ADM/27/92-93/2

In exercise of the powers conferred by sub-section (2) of Section 3 of the Goa Sales Tax Act 1964, read with Government Notification No. Fin(Rev.)/2-36/AR/16/74 dated 5-11-1974, Shri M. A. A. Albuquerque, is appointed as Assistant Sales Tax Officer for the purposes of the said Goa Sales Tax Act, 1964 with effect from 16th December, 1992 (F.N.).

D. S. Shirodkar, Commissioner of Sales Tax.

Panaji, 8th January, 1993.

Notification

No. CST/ADM/27/91-92/3

In exercise of the powers conferred by sub-section (2) of Section 3 of the Goa Sales Tax Act, 1964 read with Government Notification No. Fin(Rev.)/2-36/AR/16/74 dated 5-11-1974, the undermentioned officials are appointed as Sales Tax Inspectors for the purposes of the said Goa Sales Tax Act, 1964, with effect from the dates shown against their names:

Sr. No.	Name of the Official	Date from which the appointment is made
1.	Smt. Catherine D'Souza	16-12-1992 (F.N.)
2.	Shri Chandrakant S. Naik	— do —
3.	Smt. Lata Madangerikar	— do —

D. S. Shirodkar, Commissioner of Sales Tax.

Panaji, 8th January, 1993.

Law (Establishment) Department

Office of the Chief Electoral Officer

Notification

No. 4-2-90/ELEC

The following Notification No. 82/Goa-LA/3/90, dated 26-11-1991 issued by the Election Commission of India, New Delhi is hereby published for general information.

B. S. Subbanna, Law Secretary/Addl. Chief Electoral Officer.

Panaji, 5th December, 1991.

Election Commission of India

Nirvachan Sadan,
Ashok Road,
New Delhi 110001

Dated 26th November, 1991
5 Agrahayana, 1913 (S)

Notification

No. 82/GOA-LA/3/90.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission of India hereby publishes the Judgment/Order, dated 30-8-1991, of the High Court of Judicature at Bombay, Panaji Bench, Goa, in Election Petition No. 3 of 1990, calling in question the election of Shri Ashok Tukaram Naik Salgaonkar to the Legislative Assembly from 6—Siolim Assembly Constituency.

By order,
BALWANT SINGH

Secretary to the Election Commission of India.

IN THE HIGH COURT OF BOMBAY AT PANAJI, GOA

Election Petition No. 3/90

Shri Chandrakant Uttam Chodankar,
R/o. House No. 581, Gudem, Siolim,
Bardez, Goa.

— Petitioner.

Versus

1. Shri Ashok Tukaram Naik Salgaonkar,
R/o. Siolim, Bardez, Goa.
2. Shri Milten Olimpia Marquis,
Verla, Canca, Bardez, Goa.
3. Shri Madhukar Raoji Shirodkar,
R/o. Gudem, Siolim, Goa.
4. Shri Kalidas Mahadev Chodankar,
R/o. Betim, Bardez, Goa.
5. Shri Anthony Leao Dias,
R/o. Siolim, Bardez, Goa and
6. Shri Armando Mascarenhas,
Dy. Collector and Sub-Div. Officer,
Mapusa Sub-Division (since deleted
vide this Court's order dated 20th
20th April, 1990).

— Respondents.

Shri V. B. Nadkarni, Senior Advocate with Shri A. C. Navalkar, advocate for the petitioner.

Shri S. D. Lotlikar, advocate for the respondent No. 1.

CORAM: G. D. KAMAT, J.

Date: 30th August, 1991.

ORDER

The petitioner is the unsuccessful candidate at the last General Elections held on 22nd November, 1989, from the 6—Siolim Constituency to the Legislative Assembly of Goa. The respondent No. 1 was declared to have been duly elected. Respondents Nos. 2 to 5 were the other contestants.

2. This petition under Section 81 of the Representation of the People Act, 1951, calls in question the election of the first respondent by invoking two grounds, namely: (1) non-compliance with the rules relating to counting of doubtful votes; and (2) the improper reception, refusal and rejection of a large number of votes.

The petitioner's case is that the counting of votes was slated for 27th November, 1989, at Aurobindo Society Hall, Panaji, where seven tables were laid for that purpose and the petitioner was adequately represented by one Counting Agent at each of these tables. According to the petitioner, several illegalities and mistakes were committed during counting of votes. Such illegalities and mistakes are said to be that whenever petitioner's Counting Agent or Election Agent disputed any doubtful vote the Counting Supervisors over ruled the objections by taking the decisions themselves with the result they counted the doubtful votes in favour of the returned candidate. This is averred to be an infraction of Rule 56 of the Conduct of Election Rules, 1961, as the Returning Officer is alone enjoined authority to accept or reject the ballot papers as a result of which a large number of invalid votes were counted in favour of the first respondent.

In the second place, it is mentioned that a substantial number of votes in petitioner's favour were rejected as invalid on the ground that they bore smudges caused by the alleged inked thumbs of the electors. Again, it is averred that there was infraction of Rule 56(2)(a) because inasmuch as the identity of the elector could not be established, a ballot paper is not liable to be rejected only because it bore smudges. It is equally averred that counting was being done in a manner that was hasty and inaccurate with the result votes cast in favour of one candidate were erroneously put in a tray of another and even upon this mistake being pointed out by the Counting Agents and/or Election Agent of the petitioner, no steps whatsoever were taken to correct the position. It is again averred that during the counting of votes polled at Polling Station No. 14 at table No. 14, the petitioner's Counting Agent Shyam P. Kalangutkar and Election Agent Deelip Y. Gaonkar, noticed that one bundle of ballot papers cast in favour of the respondent No. 1 contained 130 ballot papers whereas each bundle should have consisted of only 50 ballot papers and lastly that ballot papers account in Form 16—Part I of Polling Station No. 14 shows that the ballot box ought to contain 898 ballot papers but the Final Result Sheet in Form 20 showed the ballot box to contain 897 ballot papers.

3. Petitioner now says that he cannot furnish the serial numbers of the ballot papers affected by the aforesaid illegalities and mistakes as the counting was proceeding at a fast pace and the Counting Supervisors refused to give inspection of the ballot papers when asked for with the result that at the end of the counting the total votes cast in favour of the respondent No. 1 i.e. returned candidate was 6,438 while those in favour of the petitioner was 6,425. 388 ballot papers were rejected being invalid with the result that respondent No. 1 was declared to have been elected by a margin of 13 votes over his nearest rival, the petitioner.

4. It is common ground that the petitioner applied for recount of votes in respect of the entire Constituency and particularly in respect of Polling Stations Nos. 26, 25, 14, 21, 3, 5, 12 and 17, on grounds mentioned in the application emphasizing the small margin of the votes. The Returning Officer originally impleaded in the petition as the sixth respondent, subsequently struck off by order of this Court dated 20th April, 1990, on petitioner's application filed, by his order passed at about 3.50 p.m. on the same day, held that no specific case of doubt was made out except in respect of votes polled at Polling Stations Nos. 3, 12, 17 and 24 which were counted at table No. 10. He accordingly ordered a partial recount of votes polled at the Polling Stations No. 3, 12, 17 and 24.

5. On a recount of these limited four Polling Stations according to the petitioner, the discrepancies revealed insofar as the votes counted in favour of the respondent No. 1 are as under:—

That one ballot paper stamped in favour of two symbols "Lion" belonging to the respondent No. 1 and "Tiger" of respondent No. 2, had been wrongly counted in favour of respondent No. 1 but the same came to be rejected on recount; that one bundle was found to contain 51 ballot papers instead of containing 50 ballot papers; that one ballot paper which had been stamped in favour of symbol "Tiger" had been wrongly counted as a vote in favour of respondent No. 1.

Now, according to the petitioner, the discrepancies revealed after recount insofar as the votes counted in favour of the petitioner are as follows:—

One ballot paper was found stamped on the reverse as well as on the obverse side and on recount it was rejected. In the second place, on one ballot paper the stamp crossed the midline of the two symbols. On recount, it was rejected.

The discrepancy now alleged from the bundle of rejected papers is as under:—

One ballot paper which was rejected for bearing smudges on recount was counted as a valid vote in favour of respondent No. 1 and two ballot papers which were rejected for bearing smudges on recount were counted as valid votes in favour of the petitioner. According to the petitioner, after this partial recount, the result shown in Form No. 20 was amended by the Returning Officer.

The petitioner now avers that immediately after the conclusion of the partial recount of votes for Polling Stations Nos. 3, 12, 17 and 24 the petitioner once again applied for recount of the votes of the entire Constituency. The petitioner says the recount is justified in view of the discrepancies noted in the partial recount. The Returning Officer however, made an order rejecting the recount of votes of the entire Constituency holding that no specific instance of discrepancy or irregularity has been mentioned in the subsequent application; that on recount of four Polling Stations, no substantial change has been found and that the candidates and their agents if at all, had to object to the wrong counting of votes on the spot when the process of counting was going on.

6. Once this application for recount was rejected, a declaration was made that the respondent No. 1 has been duly elected to the Goa Legislative Assembly from that Constituency. The result of the election shows that the petitioner polled 6,425 votes whereas the respondent No. 1 polled 6,438 votes. Respondents No. 2, 3, 4 and 5 respectively polled 1,178, 107, 87 and 23.

7. According to the petitioner the illegalities and breaches that are committed by the Counting Supervisors and Returning Officer are infractions of Rule 63(4) read with Rule 56 of the Conduct of Election Rules, with the result there has been improper reception of votes in favour of the respondent No. 1 and at the same time improper refusal of votes in favour of the petitioner, with the result the petitioner prays the election of respondent No. 1 be voided and claims a further declaration that the petitioner has been duly elected instead. To achieve this purpose, it is prayed that the Returning Officer be directed to give inspection of the records relating to the election in the first place and recount of votes polled by the respondent No. 1 in the said Constituency and of votes rejected by the Returning Officer.

8. Barring respondent No. 1, the returned candidate, no other candidate has put in appearance. In his defence the respondent No. 1 states that at no stage either the petitioner, his Election Agent, or Counting Agents disputed any ballot as doubtful, nor at any stage took any objection of the nature now averred in the petition. Whenever any doubt was expressed such ballot paper was put in a separate container and after conclusion of the counting at the relevant table the container was taken to the Returning Officer who, on examination, decided the validity of the ballot papers. At no stage the counting officer or supervisors had overruled any of the objections raised on behalf of the petitioner and therefore, there was no violation of Rule 56 of the Conduct of Election Rules, 1961 or any other provision of the Act or the Rules. It is further averred that no vote whatsoever in petitioner's favour was wrongly rejected or declared invalid; that whatever votes rejected as a result of the smudges caused by inked thumbs of the voters was done in accordance with the rules and law. The petitioner's averment that the counting of ballot papers was done in a hasty and inaccurate manner is denied and, on the contrary, suggested that the counting started at 8.30 a.m. in the morning and continued till about 2.30 p.m. and at no stage any contention was raised that the counting was progressing in haste. It is equally denied that there was any bundle containing 130 ballot papers instead of 50 and it is suggested that this insinuation is an afterthought. So far as the discrepancies pointed out in the petition, it is averred that it did not affect the result of the election because the tally remained the same.

In paragraph 17 of the written statement without prejudice to the case set up, respondent No. 1 says that the petitioner has miserably failed to give any particulars whatsoever of the allegations made and which form the basis of the petition. The story at the time of the first recount and thereafter for the second recount and even in the present petition fails to show any material or proof of evidence prima facie to point out any illegality or irregularity or mistakes/errors in counting of votes and therefore, the petitioner is not entitled for recount as a matter of course.

On this basis it is pleaded that no case has been made out by the petitioner for recount of the votes in respect of the whole Constituency and therefore, the petition is baseless, frivolous and unreasonable. Insofar as the first application for recount was concerned, it is averred that the petitioner was satisfied when the Returning Officer made an order directing recount of only four Polling Stations counted at table No. 10 rejecting recount of other Polling Stations at the other tables. Though petitioner failed to make out any case for recount of the entire Constituency in the first application, the Returning Officer was justified in making the second order rejecting the second application of the petitioner which cannot be faulted with. According to the respondent No. 1 the whole attempt of the petitioner at that stage was nothing but attempts at fishing and the present petition is a further attempt in that direction.

9. On the basis of the pleadings, the following issues were framed and needless to say settled in consultation with the learned counsel:—

- “1. Whether the respondent No. 1 proves that the petition is not maintainable as the same is based on vague allegations devoid of particulars.
2. Whether the respondent No. 1 proves that the petition is liable to be dismissed in limine on the ground that refusal by the Returning Officer for recount is justified and therefore the petition does not survive.
3. Does the petitioner prove that he is entitled for an order for recount of votes polled? What relief? What order?”

Issues Nos. 1 and 2 were directed to be heard as preliminary issues.

10. Before the preliminary issues were heard an application was presented on 10th August, 1990, wherein the petitioner prayed for an order directing the Returning Officer to give inspection of ballot papers polled in the election from the said Constituency and more particularly, the votes in Polling Stations Nos. 26, 25, 21, 14, and 5. Obviously, this was an application under Order VI Rule 5 of the Code of Civil Procedure and the emphasis appears to be the small margin, viz. 13 votes which made difference in the election. This application has been vehemently opposed on behalf of the respondent No. 1. The main relief in the petition itself is the recount of the ballot papers, without which no declaration sought can be conceded. The application dated 10th August, 1990, filed is for inspection of the ballot papers or, at least, restricted to five Polling Stations, the question before the Court is whether at the stage at which such inspection is sought an order can at all be made more particularly when preliminary issues Nos. 1 and 2 are yet to be decided, for if the preliminary issues are decided against the petitioner and in favour of the respondent No. 1 needless to say that the petition is liable to be rejected with the result the question of inspection as prayed for in the application would not arise. There is indeed no doubt a difference between recount of votes and inspection of ballot papers, but then it must be seen that secrecy of the ballot papers has got to be maintained, that being part of the purity of elections, which is a trust of the democratic process. It is well-settled law that to maintain purity in elections and secrecy of ballot papers, no orders relating to inspection or recount could be lightly made and a very strong case is required to be made by a person seeking such a relief. Knowing the parameters, it must be stated in all fairness that the learned counsel for the petitioner agreed to argue the preliminary issues alongwith the merits of the application dated 10th August, 1990 and it was common ground that the decision on preliminary issues will decide the fate of the prayer for inspection. The preliminary issues and that application are accordingly directed to be heard and which are now being disposed of by this order.

11. Relying upon Section 87 of the Representation of the People Act, 1951, Mr. Nadkarni, counsel for the petitioner, has rightly pointed out that the Code of Civil Procedure 1908

applies for trying election petitions. He therefore invokes Order VI Rule 5 of the Code saying that the inspection prayed for by the petitioner is required in fact for giving better and further particulars. Now turning to paragraph 13 of the written statement he points out that the respondent No. 1 has himself made a grievance that he is unable to deal effectively and properly with the allegations for want of particulars and therefore the petitioner be directed to furnish better and further particulars in which event the respondent No. 1 has sought leave to put in additional written statement dealing with the same. Mr. Narkarni therefore says that issue No. 1 is based on this grievance of the respondent No. 1. He therefore says that this is a vicious circle where the petitioner in unable to give further and better particulars unless there is an inspection and there cannot be an inspection unless a case is made out.

Issue No. 1 has been raised by the respondent No. 1 in his pleadings. The foundation for that issue is found in para 13 and also in para 17 of the written statement. It is clearly averred that petition is liable to be dismissed in limine on the ground of vagueness and in the absence of concise statement of material and particulars. The grievance of respondent No. 1 in para 13 requiring petitioner to furnish better and further particulars while making a complaint of non-supply of particulars is in context of replying to a particular para of the petition and craving opportunity to file additional written statement in the event better and further particulars are brought to light.

12. It must be seen that the so-called vicious circle is not something new nor the matter is resintegra. A large number of authorities by now have settled this position. The principles have been well laid and it is only a matter of application of the principles to the facts of a given case.

13. Mr. Nadkarni now urges that what comes into the picture is Section 83(1)(a) and that Section 83(1)(b) has no application for the latter falls in the realm of petition seeking reliefs based on corrupt practices. Section 83(1) of the Act lays down the requirement of the contents of a petition by way of a mandate that petition (a) shall contain a concise statement of the material facts on which the petitioner relies; (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible for the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice.

There can be no quarrel that all that a petitioner is required to do is to make a concise statement of material facts under Section 83(1)(a) in cases where a corrupt practice is not made a foundation. Now, according to Mr. Nadkarni, whatever material facts disclosed are sufficient and strong enough to make out a case for inspection of the ballot papers and to seek the final prayer for recount of the votes polled. He therefore urges that when Section 83(1)(a) is complied and (b) not attracted, nothing can be faulted with. Issue No. 1 infact becomes superfluous and nothing can be held against the petitioner on account of lack of material facts.

14. He relies upon the decisions of *Roop Lal Sathi v. Nachhattar Singh* reported in AIR 1982 S. C. 1559 and *Ram Sewak Yadav v. Hussain Kamil Kidwai & Ors* reported in AIR 1964 S. C. 1249.

In paragraph 25 of the report in Rooplal's case, there is an observation that the High Court has ample power while trying an election petition to direct further and better particulars as to the nature of the claim or defence under Order VI Rule 5 of the Code and these observations came in the wake of consideration of Section 83 of the Representation of the People Act. It must be however seen that the question is not of the amplitude of the power of the High Court and the question is one of application of a rationale to the fact of a given case.

Insofar as the decision in Kidwai's case (supra) is concerned, the power of the Election Tribunal to direct discovery and inspection of documents was recognized. The emphasis of Mr. Nadkarni however appears to be that when in the interest of justice inspection becomes necessary it must be so directed.

What is however relevant to notice is that the order of inspection may not be granted as a matter of course and an order of that nature will be justified provided two conditions are fulfilled: (1) that the petition for setting aside the election contains an adequate statement of the

material facts on which the petitioner relies in support of the case; and (2) that the Tribunal then (the Court now), is *prima facie* satisfied in order to decide the dispute and to do complete justice to the parties that inspection of the ballot papers is necessary but none-the-less it is equally made clear that no inspection of ballot papers could be granted to support the vague pleas made in the petition not supported by material facts or to fish out evidence to support such a case. It is further required that the case of the petitioner must be set out with precision supported by averment of material facts and that mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection.

15. Relying upon Rameshwar Dial's "Election Law" 4th Edition at page 380 Mr. Nadkarni says that the author says this:

That for a review of the counting by the Returning Officer in order to determine whether any improper votes had been accepted or any valid votes had been rejected, it is natural that the Court should be empowered to allow inspection of the ballot papers and to order scrutiny and recount of votes on sufficient grounds being shown for passing such order; that mere production of the sealed boxes of ballot papers before the Election Tribunal does not make them a part of the record; unless inspection is allowed it may not be possible for the election petitioner to give proofs of particular voting papers relied upon by him to prove the ground under consideration. Where inspection of the ballot papers is allowed the election petitioner as a next step will naturally ask the Tribunal for permission to incorporate the number of ballot papers obtained in consequence of the inspection and the election petition would be amended; that the power of the Court to exercise this power is not that strict as in dealing with cases where the allegations relate to corrupt practices.

In this context it is mentioned that there will be two distinct stages for the trial of the election petition, the first being a case has to be made out for an order to allow inspection of ballot papers and after the ballot papers have been inspected, the particulars of such ballot papers may be taken for the ground or improper acceptance or rejection and placed before the Court. While referring to the case law the learned author has said that these two distinct stages have to be kept in mind as very often an order for inspection of ballot papers is taken to authorize recount and scrutiny also. The author thereafter makes a note that having regard to the scrutiny of voting and other considerations involved in a recount and scrutiny of votes, the Courts have taken a very strict view and the various factors for consideration are: (1) small margin of votes; (2) denial of proper facilities at the time of counting votes by the Returning Officer; (3) filing of complaints and objections before the Returning Officer; (4) an application before the Returning Officer for recount; and (5) the proof of invalid votes whether large or small.

16. Mr. Nadkarni now refers to the order of the Returning Officer which was made at 3.50 p.m. on 27th November, 1988, to suggest that the Counting Supervisors have themselves accepted the mistakes though they were rectified. This clearly supports the petitioner's case says Mr. Nadkarni, which is in violation of Rule 56 of the Conduct of Election Rules. He now says that when mistakes were pointed out to the Counting Supervisors Rule 56 does not permit Counting Supervisors to decide those mistakes and that Rule empowers only the Returning Officer to do so.

17. The order of the Returning Officer reads thus:—

"ORDER"

The applicant has expressed doubts about the counting of four ballot boxes on table No. 10 specifically. As regards other polling stations no specific case has been made out. The Counting Supervisor of table No. 10 Shri Vishnu Naik admits that some mistakes were pointed out to him by the counting agent of the applicant but that the same were rectified. However the applicant does not agree with this contention.

The applicant has stated that he has no doubts about the votes counted on the table of the R.O. i.e. postal ballot papers and doubtful votes. In these circumstances in all fairness, I order recount of votes polled at the Polling Stations Nos. 3, 12, 17 and 24.

Announced in the counting hall in the presence of the applicant and the opposing candidate Shri Ashok Naik Salgaonkar and the counting supervisor concerned.

Sd/- R. O.
27-11-1988
3.50 p.m."

From the above order it is clear that the petitioner has made a complaint expressing doubts about the counting of four ballot boxes at table No. 10 specifically. No specific complaint was made in relation to other Polling Stations. The so-called mistake admitted by the Counting Supervisor Vishnu Naik at table No. 10 is in connection with objections that were raised on behalf of the petitioner during the counting of votes by his Elector Agent or by his Counting Agents and the Counting Supervisors after having gone into the same rectified the situation. This cannot be mixed up to hold that any doubtful vote had been determined by the Counting Officials in derogation of the powers of the Returning Officer, for the doubtful votes were determined by the Returning Officer only. Since the doubt expressed by the petitioner was only in respect of four ballot boxes at table Nos. 10, the Returning Officer directed the recount of Polling Stations Nos. 3, 12, 17 and 24. On recount some errors were noticed and corrected. The result is that the petitioner's grievance was met. Factually, there was no difference in the tally of total number of votes and the result remained the same. The petitioner emboldened with partial recount filed another application for recount of the whole Constituency, which was rejected.

In Sharda Devi's case reported in AIR 1982 S.C. 1569, the question had arisen in the matter of striking down certain paragraphs. The High Court had not reached any finding that the paragraphs which were directed to be struck out were either frivolous or vexatious. This was however faulted with by the Supreme Court and in that context it was observed that the Court and the Returning Officer should not chart the easy course of rejecting ballot papers as invalid under the slightest pretext but serious attempt should be made before rejecting ballot papers as invalid to ascertain if possible whether the elector has cast his vote with sufficient clarity revealing his intentment. This proposition can hardly be disputed.

Referring to Rule 56 of the Conduct of Election Rules Mr. Nadkarni says that the ballot paper is liable to be rejected on the ground that it bore smudges only when the voter is liable to be identified as a result of such smudges. In as much as merely because the ballot paper contains smudges with inked thumbs those votes could not have been rejected by the Returning Officer. He now points out that he has pleaded that about 388 votes have been rejected which is a large number of votes on the ground that they bore smudges. This, he says therefore, is a serious matter which required to be examined by the Court. Not less important according to him is that one bundle contained 130 votes when each bundle ought to have contained only 50 votes and in this connection he says that whatever material particulars are supplied are not only sufficient, but what is more, the respondent has admitted these facts to be true in the written statement, more particularly in paragraphs 21 and 22 thereof. Section 100(1) (d) (iv) being one of the grounds for setting aside the election clearly stipulates that the improper reception, refusal or rejection of any vote or reception of any vote which is void for non-compliance of the provisions of the Constitution, Act or Rules are enough to set aside the election of a returned candidate. Though he has not invoked breach of any of the provisions of the Constitution or of the Act, the complaint of the petitioner which fairly comes within Section 100(1) (d)(iii) and (iv) is nothing but infraction of Rule 56 and Rule 63 of the Conduct of Election Rules. I will come to these Rules one I have seen the questions raised by the respondent No. 1 as to how the petitioner's entire case is built on vague allegations devoid of substance either in the matter of improper reception, refusal or rejection of any vote or reception of any void vote, or in the matter of the non-compliance with the provisions of the Rules.

The complaint of respondent No. 1 is that the election petition does not contain adequate statement of material facts on which the allegation of irregularity and illegalities and mistakes in the counting of the votes are founded and it is on the basis of this that issue No. 1 has been framed. Now, in the application dated 10th August, 1990, for inspection of ballot papers the petitioner relies upon the statements made in the petition regarding the irregularity/illegalities and mistakes and nothing new has been stated in the application. What is however relevant to notice is what is said in that application in para 6:—

"In view of the above, the applicant says that the said Election Petition contains an adequate statement of all the material facts on which the allegations of irregularities/illegarities in counting of the votes are founded and that on the basis of evidence adduced therein and the oral evidence which the applicant desires to lead the allegations made in the said petition are bound to be prima facie established, affording a good ground for believing that there have been irregularities and mistakes in counting. The petitioner's case is that the votes were miscounted. The inspection of the votes is therefore necessary for the fair disposal of the petition."

From above, it is clear that on the basis of the facts and allegations in the petition and on the basis of the evidence to be adduced together with the oral evidence the allegations in the petition are said to be prima facie established affording good ground for believing that there have been irregularities and mistakes in the counting.

18. In the light of all this, the issue No. 1 is vitally connected with inspection sought. It is therefore necessary to examine issue No. 1 which has again nexus with issue No. 2. If the petitioner's contention is accepted then perhaps it will facilitate the consideration of his application for inspection. Issues Nos. 1 and 2 can be conveniently taken up together.

19. Section 83 of the Representation of the People Act in terms provides that an election petition shall contain a concise statement of the material facts on which the petitioner relies under Section (1)(a) thereof. What is the requirement of the material facts that are required to be stated in the petition needs to be seen.

In the decision of Ram Sewak Yadav (supra) the matter related to the inspection of ballot papers. Ram Sewak Yadav was declared elected after having secured highest number of votes and elected as Member of Parliament. His election was challenged by Kidwai for being void and for an order for declaration that he had been duly elected. The petition was dismissed. An appeal was taken to the High Court of Allahabad. The order of the Election Tribunal was set aside and the petition remanded for trial with a direction to the Tribunal to give reasonable opportunity to both the parties to inspect ballot papers. This order was challenged before the Supreme Court.

Kidwai's principal grounds in the petition were improper reception, refusal and rejection of votes at the time of counting and in consequence the election was materially affected; that there was discrepancy between total number of votes in Forms 16 and 20; that tendered votes were wrongly rejected; that at the Polling Station No. 29 Polling Officer did not give ballot papers to the voters and that the counting had proceeded until 8.30 p.m. in insufficient light despite his protest.

The Supreme Court set aside the order of the High Court for interfering with the exercise of discretion by the Tribunal with the result the dismissal of election petition of Kidwai was upheld.

On an examination of the petition the Supreme Court observed that in an election petition the power to direct discovery and inspection of documents is not governed by the narrow limits of Order XI of the Code of Civil Procedure. It held that the Election Court has ample powers as such powers are implicit in Section 100(1) (d)(iii), 101, 102 read with Rule 93 of the Conduct of Election Rules, 1961, but it is however subject to the statutory restriction about the secrecy of the ballot paper prescribed by the Rules and the Act. The Supreme Court further observed that the order for inspection may not be granted as a matter of course and regard being had to the insistence upon the secrecy of the ballot papers the Court would be justified in granting an order of inspection provided two conditions are fulfilled:—

- (i) that the petition for setting aside and election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and
- (ii) the Tribunal is prima facie satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary.

What is still however relevant to notice is that no order for inspection of ballot papers can be granted to support

vague pleas made in the petition not supported by material facts or to fish out evidence in support of such pleas. It further lays down that the case of the petitioner must be set out with precision supported by averments on material facts. But a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection.

It is true as Mr. Nadkarni pointed out that in the interests of justice an order for inspection may be directed but not unless a case is made out.

20. The two conditions iterated in Ram Sewak Yadav's case are later fortified by the decision of '*Suresh Prasad Yadav v. Jai Prakash Mishra & Ors.*' reported in AIR 1975 S. C. 376. This is again a case of inspection and recount of ballot papers as the present case is. A Bench consisting of three Judges of the Supreme Court held:—

"Before dealing with these contentions, we may recall, what this Court has repeatedly said, that an order for inspection and recount of the ballot papers cannot be made as a matter of course. The reason is twofold. Firstly such an order affects the secrecy of the ballot which under the law is not to be lightly disturbed. Secondly, the Rules provide an elaborate procedure for counting of ballot papers. This procedure contains so many statutory checks and effective safeguards against trickery, mistakes and fraud in counting, that it can be called almost fool-proof. Although no hard and fast rule can be laid down, yet the broad guidelines, as discernible from the decisions of this Court may be indicated thus:

The Court would be justified in ordering a recount of the ballot papers, only where:

- (1) the election-petition contains an adequate statement of all material facts on which the allegations of irregularity or illegality in counting are founded;
- (2) On the basis of evidence adduced such allegations are prima facie established, affording a good ground for believing that there has been a mistake in counting; and
- (3) The Court trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties".

In '*Chanda Singh v. Chh. Shiv Ram Varma & Ors.*' reported in AIR 1975 S.C. 403 while construing Rule 63 of the Conduct of Election Rules, 1961, it is laid down that it obligates the candidates to state the ground on which he demands recount. The Supreme Court observed that mere doubt or small lead or unspecified blemish in the manner of counting falls short of needs of the said rule. What is not reasonable ground or seriously supported is held to be unreasonable or frivolous and that the Returning Officer would be justified in holding that the application for recount is frivolous.

21. Whimsical and bald statement of the candidate that he is not satisfied with the counting is not tantamount to a statement in the grounds within the contemplation of Rule 63 (2) of the Conduct of Election Rules. Apart from mentioning of the irregularity or illegality with the process of counting, it is necessary that the same should be supplemented by an antecedent or contemporaneous oral statement of the author or any of his agents and in the absence thereof recount is liable to be summarily rejected under Rule 63.

This is what is held in the decision of '*Beliram Bhalai v. Jai Behari Lal Khachi & Anr.*' reported in AIR 1975 S. C. 233. That the Court would be justified in ordering recount or permitting inspection only when all the material facts on which the allegations of irregularity or illegality in counting are founded and adequately pleaded in the Election petition and the Court trying the petition is prima facie satisfied that making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice to the parties. The further observation is not of less importance that when the allegations are not precise and were mostly general and vague floating on suspicious and beliefs of the petitioner, the High Court will be justified in rejecting the same.

22. The first thing to consider is whether a petition can be dismissed at its threshold if the petition is not in conformity with Section 83 (1)(a) viz. the allegations made are vague and there is no concise statement of material facts.

There is no difficulty in following this course urges Mr. Lotlikar based on several authorities of the Supreme Court and of the High Court.

He relies upon the following authorities:

Azhar Hussain v. Rajiv Gandhi reported in AIR 1986 S. C. 1253 lays down not only that an election petition can be but must be dismissed under the provisions of the Code of Civil Procedure if the mandatory requirement enjoined by Section 83 to incorporate the material facts and particulars relating to corrupt practice in the election petition are not complied with. On observing that the Code of Civil Procedure applies to the trial of Election Petitions, by virtue of Section 87 of the Act, the Court trying an Election Petition can act in exercise of the power of the Code including Order VI Rule 16 and Order VII Rule 11(a). It further observed that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of powers under the Civil Procedure Code even when Section 83 does not find a place in Section 86 of the Act, once the Court comes to hold that there is omission of even a single material fact which would lead to incomplete cause of action. No doubt that this was a case where corrupt practice had been alleged, but undoubtedly the ratio of the decision covers all cases falling under Section 83. While reaching this conclusion the Apex Court has considered several cases.

Referring to the case of *Samant N. Balakrishna etc. v. George Fernandes & Ors. etc.* reported in AIR 1969 S. C. 1201, the Supreme Court observed that in Samant's case it has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without material facts relating to corrupt practice is not an election petition. Referring to *Shri Udhav Singh v. Mahdavi Rao Scindia* reported in AIR 1976 S. C. 744, it held that this case has enunciated the law that all primary facts which must be proved by a party to establish the cause of action or his defence are material facts. While making reference to glaring omissions in the matter of giving particulars in referring to the case of *Nihal Singh v. Rao Birendra Singh & Anr.* reported in 1970(3) SCC 239, it is observed that a pleading should not be vague so that a wide scope is left to the petitioner to adduce evidence in respect of those omissions, for conveniently witnesses could be procured. In *Dhartipakar Madan Lal Agarwal v. Shri Rajiv Gandhi* reported in AIR 1987 S. C. 1577 the Supreme Court held that when election petition does not disclose any cause of action, the allegations must be struck down under Order VI Rule 16 of the Code of Civil Procedure and further when no triable dispute survived after striking down the pleadings, the petition has to be rejected even before filing the written statement; that the Representation of the People Act is a complete and self-contained Code within which the rights are claimed in relation to an election or an election dispute. On an examination of the scheme of the Act it is laid down that once Section 83 lays down a mandatory provision in providing that an election petition shall contain a concise statement of material facts and set forth full particulars of corrupt practices, it makes it obligatory on an election petitioner to give requisite facts, details and particulars of each corrupt practice with exactitude and when the election petition fails to make out a ground, it must fail at the threshold.

23. In *Samant N. Balakrishna v. George Fernandes & Ors.* (supra), the Supreme Court held that Section 83 is mandatory and undoubtedly pointed out distinction between material facts and particulars. To have entire and complete cause of action, the pleadings must be in the shape of material facts and function of particulars is to give necessary information to present full picture of a cause of action. While iterating that omission of single material fact leads to an incomplete cause of action, in the decision of *P. K. K. Shamsudeen v. K. A. M. Mappillai Mohideen & Ors.* reported in AIR 1989 S. C. 640, on a conspectus of several authorities the Supreme Court laid down this:—

"Thus the settled position of law is that the justification for an order for examination of ballot papers and recount of votes is not to be derived from hind sight and by the result of the recount of votes."

What is relevant to note is that the justification for an order should be provided by the material placed before a Court by the election petitioner on the threshold before an order for recount of the votes is actually made, the reason being the salutary rule of secrecy of the ballot which cannot be lightly and hastily broken.

On consideration of this material it can safely be concluded that the petition has to be dismissed or rejected at its threshold if material facts are not pleaded in compliance with the requirements of the mandate of Section 83.

24. In the present petition, the relief that can be granted to the petitioner, if at all, is after a recount is directed. In other words, in the absence of recount, the petitioner cannot succeed in the petition. It may be noted at this stage itself that despite the respondent No. 1 having averred lack of particulars and material facts or material in proof of the allegations, the petitioner has not chosen to amend the petition and instead his case is that he be permitted inspection and make discovery. It is indeed true as contended by Mr. Nadkarni, that the respondent No. 1 in para 13 of his written statement did say that the petition is devoid of particulars and otherwise vague and petitioner be directed to give particulars. This statement of the respondent No. 1 in my opinion cannot be taken advantage of by the petitioner because the respondent No. 1 has in reality raised the issue in paragraph 17 that the petition is liable to be dismissed at the threshold for being vague and for lack of material facts. There is also some justification for Mr. Lotlikar to contend that the word "particulars" used in para 13 must be taken in the context of the allegations and not referred to and used in Section 83(1)(b) of the Act.

It therefore now becomes necessary to see as to what is the settled position of law and how in the absence of material facts being pleaded, petition is liable to be rejected.

I have already referred to authorities while dealing with the rejection of petition at its threshold in the decisions of AIR 1986 S. C. 1253, AIR 1969 S. C. 1201 and AIR 1987 S. C. 1577 and some others.

The Allahabad High Court in the decision of *Shyam Lal Rawat v. Ram Lal & Ors.* reported in AIR 1987 All. 32 held that in the absence of precise pleadings as to the irregularity in counting of votes urged, petition has to be rejected. In another decision of *Gyanendra Pratap Singh v. Khurshed Ahmad & Ors.* reported in 1987 All. L. J. 160 in the matter of challenges on the ground of illegalities in counting viz. improper reception and rejection of votes the Allahabad High Court held when material facts are not clearly stated, allegations are liable to be struck off. Same thing is mentioned in the matter of challenge on the ground of non-compliance with the provisions of the Act and the Rules, that is to say, in cases falling under Section 100(1) (d) (iii) and (iv). In *Rafiqat Husain v. Rama Shanker Kaushik & Ors.* reported in 1986 All. L. J. 1446, the Allahabad High Court held that in a claim for recount of votes material facts are necessary to be stated in such a claim and on failure to state material facts in the petition the same is liable to be rejected under Order VII Rule 11(a). While saying as to what is required to be indicated in a claim for recount, it held that the petitioner must not only give the figures of the votes which according to him were improperly accepted or rejected, but the basis of the allegation must be disclosed, the serial number of ballot papers must be set out, the name of the Counting Agent, the number of the counting table, the name of the Counting Supervisor, number of round, time, place, date, details of objections, if any, kept by the Counting Agent and the basis of information. It is held that all this constituted material facts and such a disclosure is essential to give a composite picture of the cause of action and when material fact is missing then there would be no adequate cause of action to maintain the petition which is liable to be rejected. When material facts or particulars are not given they cannot be allowed to be incorporated either by way of amendment or by furnishing evidence.

In *Pritpal Singh v. Ranjit Rai & Ors.* reported in AIR 1984 Delhi 198, the election petition was rejected at the threshold. The allegation in the petition was improper rejection of valid votes but the petitioner had failed to give serial numbers of ballot papers which were alleged to be improperly rejected and number of Polling Stations was not stated. The learned Judge of the Delhi High Court held that the petition does not disclose any cause of action as requirement of concise statement of material facts is a

sine qua non for an election petition as of any other statement of claim.

Long ago in the decision of *Jitendra Bahadur Singh v. Krishna Behari & Ors.* reported in AIR 1970 S.C. 276 the Supreme Court held that before a Tribunal can permit inspection or scrutiny of ballot papers, sought on the basis of assertions not accompanied by statement of material facts, nor supported by any evidence, scrutiny cannot be ordered. It held that the basic requirements to be satisfied before an Election Tribunal can permit the inspection of ballot papers are: (i) that the petition for setting aside the election must contain an adequate statement of material facts on which the petitioner relies in support of his case; and (ii) the Tribunal must be prima facie satisfied that in order to decide the dispute and to do complete justice between the parties, inspection of ballot papers is necessary. The material facts required to be stated are those facts which can be considered as material supporting the allegations. It is observed in other words that they must be such facts so as to afford a basis for the allegations made in the petition. What is however not less important is the observation when the Supreme Court says if an election petitioner in his election petition gives some figures as to the rejection of valid votes and acceptance of invalid votes, the same must not be considered as an adequate material of additional facts when the petitioner has not disclosed in the petition the basis on which he arrived at those figures. On an examination of the scheme of the counting of the ballot papers, the Court observed that before a vote is rejected the agent of the candidate must be permitted to examine the concerned ballot paper. Therefore, it is quite easy for them to note down the serial number of the concerned ballot papers and raise objection relating to the validity of those papers at that stage and all this need be stated in the petition.

In the decision of *Bhabhi v. Sheo Govind & Ors.* reported in AIR 1975 S.C. 2117, the Supreme Court laid down as imperatives following conditions before sample inspection of ballot papers:—

- (1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations;
- (2) That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statement of material facts;
- (3) The Court must be prima facie satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount;
- (4) That the Court must come to the conclusion that in order to grant prayer for inspection it is necessary and imperative to do full justice between the parties;
- (5) That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to indulge in a roving inquiry with a view to fish materials for declaring the election to be void; and
- (6) That on the special facts of a given case sample inspection may be ordered to land further assurance to the prima facie satisfaction of the Court regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials."

In the decisions of *Suresh Prasad Yadav and Beliram Bhaik* (supra) this Court has already seen as to when recount can be granted. In the light of this let us now examine the present case.

25. The first infraction alleged is violation of Rule 56 of the Conduct of Election Rules; that the counting of doubtful votes was contrary to the procedure. Para 5-1(a) avers that whenever the petitioner's Counting Agent/Election Agent disputed any vote as "doubtful" the Counting Supervisors overruled the objections and themselves took decision and counted the said doubtful votes in favour of the respondent No. 1. though Rule 56 enjoins the Returning Officer and not the Counting Supervisors to decide the validity of doubtful votes. As a result, a large number of invalid votes were counted in favour of respondent No. 1. These averments of the petitioner in my view are totally devoid of any particulars and, on the contrary so vague that it cannot bear the scrutiny on any count. In the first place there is nothing definite that the petitioner's Counting Agents/Election Agent disputed any vote as doubtful

because the statement begins with "whenever". The next to see is again a vague statement as to whether the doubts were raised by the Counting Agents or Election Agent. No names of Counting Agents have been mentioned. Nothing is said as to when such doubt was raised at what table, at what round and which serial numbers of the ballot papers. It is next said that as a result, large number of invalid votes were counted in favour of the respondent No. 1. In the first place no proof of invalid votes is given nor number of votes said to have been counted in favour of respondent No. 1.

Under para 5-I (b) it is averred that substantial number of votes in petitioner's favour were rejected as invalid on the sole ground that they bore smudges of the alleged inked thumbs of the electors. Again the number of votes rejected on the ground of invalidity of bearing smudges is not there nor the particulars of the ballot papers, nor the table at which they were counted or at what round.

In para 5-I (c) it is averred that the counting was done in a manner that was hasty and inaccurate with the result that the vote cast for one candidate was erroneously put in the tray of votes of another candidate and upon this mistake being pointed out by the Counting Agents/Election Agent no corrective steps were undertaken by the Counting Supervisors. This statement is again very wild and vague. The mere allegation that the counting was hasty and that it was inaccurate has no meaning whatsoever unless the inaccuracies are pointed out and material placed regarding the time factor. Again how many votes have gone into the tray of other candidates and which candidates had not been stated. What is still relevant to notice is that it is stated that this was pointed out by the Counting Agents/Election Agent which is again a vague statement for, in the first place, it is not known whether it is the Counting Agents or the Election Agent who pointed out and in the second place in how many cases it was pointed out, nor the names of who so did it.

Indeed in para 5-1 (d) it is averred that at table No. 14 where votes polled at Polling Station No. 14 were being counted, petitioner's Counting Agent Shyam P. Kalangutkar and his Election Agent Deelip Y. Govenkar noticed that one bundle of ballot papers cast in favour of respondent No. 1 contained 130 ballot papers, whereas each bundle should have consisted of only 50 ballot papers. Even going by the assumption that the petitioner is not liable to give the particulars of these ballot papers, yet the allegation has no substance worth inquiry because nothing turns merely because one bundle consisted of 130 votes instead of 50 ballot papers. A mere infraction of a rule or a practice of one bundle is to consist of only 50 ballot papers and instead consisted of 130 votes without showing either invalidity or illegal reception or refusal by itself cannot affect the result of the election or the counting. What is again required to be noticed is that mere infraction of rules is not enough and what is required of the petitioner is to show that the result of the election insofar as the returned candidate is concerned has been affected so as to attract the ground under Section 100(i)(d)(iv) for setting aside the election.

26. Insofar as the allegation in para 5-I(e) is concerned, it is mentioned that the ballot paper account in Form 16-Part I of the Polling Station No. 14 showed that the ballot box should contain 898 ballot papers but the Final Result Sheet in Form 20 showed that the ballot box contained 897 ballot papers. In terms of Rule 63 it is clear that once the counting is over, the account is mentioned in Form 16-Part I and the same is liable to be corrected if any mistake is detected and then entered in the Final Result Sheet in Form No. 20. Prima facie, the allegation does not appear to be sound because the number of votes polled have tallied with the number of votes counted. Therefore, this allegation seems to be without any substance.

27. A wild statement has been made in Sub-para II that the petitioner's Counting Agents S/Shri Nameshwar V. Goltekar, Sadashiv G. Agarwadekar, Dina V. Goltekar, Sadanand V. Govenkar, Anand T. Salgaokar, Fondou U. Shirodkar, Shyam P. Kalangutkar and Vishwanath Verekar and Election Agent Shri Deelip Y. Govenkar took objections to the illegalities and mistakes but they were overruled by the Counting Supervisors without reference to the Returning Officer. No particulars are provided as to what are the objections taken and what are the illegalities and mistakes. In fact, there is no foundation and this again is a vague statement that the objections, illegalities and mistakes were overruled by Counting Supervisors without even naming

as to who are the Counting Supervisors. It is well-known that the Counting process is an elaborate one and when a genuine doubt exists such ballot is referred to the Returning Officer. If any infraction is committed by the Counting Supervisors there must be at least some contemporaneous record. Nothing has been mentioned.

It is indeed alleged that the petitioner is unable to furnish serial numbers of the ballot papers as the counting was proceeding at fast pace and further that the Counting Supervisors refused to give inspection but what is worth noticing is why at no stage the petitioner's Counting Agent or Election Agent made a protest in writing that no inspection was given despite inspection was sought to point out to alleged illegalities and mistakes.

23. Petitioner now says that he applied to the Returning Officer for recount of votes (Annexure P. 1) in respect of the entire Constituency and particularly in respect of Polling Stations Nos. 26, 25, 14, 21, 3, 5, 12 and 17. Let me have a look at the application made. The petitioner himself applied in writing to the Returning Officer as under:—

"Respected Sir,

I am requesting to take up recounting of ballot in respect of whole Constituency and particularly in respect of booths Nos. 26, 25, 14, 21, 3, 5 & 12, 17 also for the following reasons:—

1. The benefit of doubtful votes is given to M. G. candidate at the table of calculation by the Officer rather than referring these ballots to the Returning Officer for his Order.
2. The calculations are done wrongly and subsequently corrected by the counting assistants and supervisors without referring to the Returning Officer.
3. The calculation is manipulated to give benefit to the M. G. candidate and refused the margin of votes in my favour.

Hence I request you to order for recounting of ballots/votes as the margin for winning is only 13 votes."

The application was indeed considered by the Returning Officer. He passed an order at 3.50 p.m. (Annexure P2) granting the request for partial recount of votes polled at Polling Stations Nos. 3, 12, 17 and 24. The Returning Officer held that doubts are expressed about the counting of four ballot boxes at table No. 10 specifically and otherwise no case has been made out for recount viz. other Polling Stations. The order itself thereafter says that the petitioner had no doubts about the votes counted on the table of the Returning Officer, i.e. postal ballot papers and doubtful votes. In accordance with this order a recount of the votes polled at the Polling Stations Nos. 3, 12, 17 and 24 was carried out. Mr. Nadkarni now points out that there is a sort of admission reflected in the order of the Returning Officer itself that the Counting Supervisor by name Shri Vishnu Naik admitted that some mistakes were pointed out while the counting was going on, but then the same were rectified as the order itself suggests. Mr. Nadkarni therefore says that regard being had to this reflection it is clear that at some stage Counting Agents had pointed out some mistakes. The question is not merely pointing out the mistake. The question is the requirement of giving material particulars and that is exactly the point that is taken by respondent No. 1.

What is more, the petitioner had some doubt insofar as the ballot boxes counted at table No. 10 and the Returning Officer directed the recount of Polling Stations Nos. 3, 12, 17 and 24.

It is pointed out on behalf of the respondent that going by the Final Result Sheet in Form No. 20 (Annexure P5) the total number of votes recounted was to the tune of nearly 2,214 and that though some discrepancies were found here and there, according to respondent No. 1 the tally of votes polled by the petitioner and the respondent No. 1 never changed.

29. According to the petitioner, he noticed some discrepancies in the partial recount and therefore made another application for recount of the entire Constituency, but however, that was rejected erroneously.

There is not even an averment in the petition that as a result the election of the respondent No. 1 has been affected.

Let me now consider the second request made by the petitioner to the Returning Officer (Annexure P3). It reads:—

"Respected Sir,

As recounting was asked by me on the previous occasion whereby your kind authority was pleased to make an order for partial recounting was asked for recounting of total votes of whole Constituency. It has been found the discrepancy in calculation and other grounds. Hence I ask for total recounting for the whole Constituency on the following grounds.

1. While counting of some of the booths it was found that the total votes shown were wrong.
2. That the invalid votes were counted for the valid one.

Thus there is reason to carry out the recounting of total votes for the whole Constituency. Please do the needful."

In the first place it must be pointed out that this application is as vague as ever and in fact there are no basis admissible or permissible for a recount of the entire Constituency. It must be seen that a losing candidate gets disappointed and attempts are not far between to take a chance by the spin of a coin asking for a recount. This application it appears was just/thrown in taking a chance that if considered favourably nothing is lost. As there was no justification whatsoever, the Returning Officer passed an Order (Annexure P4) to read thus:—

"A recount of four polling stations was already ordered and it was accepted by the applicant and carried out. No specific instance of discrepancy or irregularity has been mentioned in this fresh application. On recount of four polling stations no substantial change was found.

It is for the candidates and their agents to object to the wrong counting of votes on the spot. I cannot grant this application as no specific instances have been cited.

Application rejected. Applicant informed in the Counting Hall."

I wonder how this order can at all be faulted with. It is indeed true that Mr. Nadkarni pointed out that there is an admission by the Returning Officer that on recount of four Polling Stations no substantial change was found. According to him some changes had been found on recount of four Polling Stations.

The question to ask now is what were the changes found in the four Polling Stations? It should be noted in the first instance the stress under which the Returning Officers are required to work and make this type of order on the spot. The process of counting is an on-going thing and it really ends only when the entire Constituencies of the General Elections are counted and results declared. The Returning Officers are not expected to pass very articulate orders as expected from Judges. The expression "no substantial change" must be construed in the light and background of facts of the order made.

30. Now what are the changes or discrepancies found at the partial recount and for finding out this let me go back to the petition. The statements are found in paragraph 10. It is averred that when recount of votes polled at Polling Stations Nos. 3, 12, 17 and 24 was taken it yielded results as follows:

In respect of votes counted in favour of respondent No. 1 it was noticed (1) that one ballot paper which had been stamped in favour of both "Lion", symbol of respondent No. 1 and "Tiger", symbol of respondent No. 2 was wrongly counted in favour of respondent No. 1 and on recount this ballot paper was rejected. What is relevant to notice is that there is no change in the petitioner's count and, on the contrary, the respondent No. 1's total tally of votes has come down by one vote; (2) that one bundle was found to contain 51 ballot papers instead of 50. Again nothing turns on this as at the most it could merely be an infraction of rule without materially affecting the result; and (3) one ballot paper which had been stamped in favour of the respondent No. 2's symbol "Tiger" had been wrongly counted as a vote in favour of respondent No. 1. It is equally mentioned that symbol "Tiger" appeared on the ballot paper immediately before the symbol "Lion" of the respondent No. 1. Again, petitioner is not affected by this result as the respondent No. 1 has lost one vote.

31. Now in respect of votes counted in favour of the petitioner, it was noticed that (i) one ballot paper was found stamped on the reverse as well as on the correct side and it was rejected on recount; and (ii) that one ballot paper stamped crossed the middle line of the two symbols and this was rejected. From the bundle of rejected ballot papers it was averred that one ballot paper which was rejected for bearing smudges was on recount counted as a valid vote in favour of the respondent No. 1 and secondly two ballot papers which were rejected for bearing smudges were, on recount counted as valid votes in favour of the petitioner. The effect of this averment, in my view, does not make any difference to the case of the petitioner or the stand of the respondent No. 1.

32. The petitioner indeed had doubt and that is why he applied for recounting of four Polling Stations at table No. 10 and that is how his application for recount had been partially granted and otherwise rejected for the total recount. The discrepancies noticed are in the partial recount in relation to Polling Stations Nos. 3, 12, 17 and 24 at table No. 10. The action of the Returning Officer in granting partial recount therefore may be considered as justified because whatever doubts raised were rectified on recount. On facts averred by the petitioner himself, some allegations are made against the Counting Supervisors and further that calculations were manipulated but there is no word as to who is the Counting Supervisor who manipulated. It is again worthwhile noticing that no specific allegation whatsoever was made against the Counting Supervisors either in the first application or the second application. Nothing was alleged that there was any confusion between the Counting Supervisors nor in the method of counting by the Returning Officers. Nothing was mentioned in the two applications regarding improper reception of votes or illegal rejection of votes and the whole thrust was mistakes committed but then the first order of the Returning Officer itself reflects that whenever mistakes were pointed out by the Counting Supervisors they were rectified. This order of the Returning Officer must be held to be a contemporaneous record. What is further relevant to note is that there was no allegation made against the Counting Supervisors that they had themselves decided doubtful votes. Further, there was no allegation of mix up. In effect, the allegation was with regard to the integrity of the officers, viz. the benefit of doubtful votes is given to the respondent No. 1. Insofar as postal ballots are concerned, as also the doubtful votes, the order of the Returning Officer made at 3.50 p.m. on the first application for recount itself shows that the petitioner had no doubts about the votes counted on the table of the Returning Officer. Therefore, it stands to reason that the validity or invalidity of the doubtful votes was never put in challenge by the petitioner and it is sought to be put for the first time in the present petition. I have mentioned all these matters only to show as to how the petitioner as an afterthought has brought about allegations without disclosing material particulars in the present petition to somehow get the recount of votes polled in an attempt to indulge in a roving inquiry with a view to fish materials as held by the Supreme Court in authority of *'Bhabhi v. Sheo Govind & Ors.'* (Supra).

33. Mr. Nadkarni indeed urged that the judgments cited on behalf of the respondent No. 1 are after consideration of the evidence and the decision invited now is on the preliminary issues even before any evidence is led on behalf of the petitioner. I must say with due respect to the learned counsel that I am unable to accept this proposition as it makes no difference. The petitioner indeed has contended that he wants to lead oral evidence but then it is his case that he cannot lead oral evidence unless inspection and discovery is directed. In other words, the petitioner wants inspection of the ballot papers to fish out for materials. I have already pointed out elsewhere in the judgment that the question is one of maintainability of the petition for the petitioner has not furnished material facts in compliance with the requirement of the mandate under Section 83 and when the petitioner fails on that mandate, the petition is liable to be rejected at the threshold. There is no question of saying that the petitioner could be allowed inspection and discovery and then lead evidence to fill up the lacunae and introduce embellishments which course to my mind is impermissible as laid down by the Apex Court. Mr. Nadkarni made gallant efforts to show that inspection and discovery of ballot papers is different from recount as a relief in the petition. Indeed these are two different things. He pointed out that on taking the averments made in the petition and read in the context of the orders of the Returning Officer passed on the two applications for recount, it is manifest

that a prima facie case has been made out and therefore, neither issue No. 1 nor issue No. 2 can survive and they must be answered against the respondent No. 1 and in favour of the petitioner. For that matter, he pointed out that in *Kidwai's* case (supra) the observations are that in a proper case where the interest of justice demands the Tribunal may call upon the Returning Officer to produce the ballot papers and may permit inspection by the parties before it and that such power is implicit under Section 100(1)(d)(iii) and Rule 93 of the Conduct of Election Rules, as also when it is laid down by the Supreme Court in requisite (ii) that when the Tribunal is prima facie satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary. I am afraid that I am unable to accept it because after laying down the requisites for inspection in its following passage in paragraph 7 the Supreme Court says:

"But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts. But a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection".

To my mind, the petitioner's case as made out for recount and subsequently for another recount and the present petition is nothing but the petitioner's suspicion or belief that there has been improper reception, refusal or rejection of votes and devoid of substance.

Mr. Nadkarni relied upon the observation in *'Roop Lal Sathi v. Nachhattar Singh'* reported in AIR 1982 S. C. 1559 and some observations in *'Km. Shradha Devi v. Krishna Chandra Pant & Ors.'* reported in AIR 1982 S.C. 1569. In the first case, the reliance is placed on paragraph 24 where the Supreme Court observed a preliminary objection that the election petition is not in conformity with Section 83(1)(a) of the Act i.e., it does not contain the concise statement of the material facts on which the petitioner relies, is but a plea in the nature of demurrer and in deciding the question, the Court has to assume for this purpose that averments contained in the election petition are true. In my view this passage cannot be read out of context. The Supreme Court had found that while deciding preliminary issue the High Court had made certain observations which show that allegations in the written statement were very much present in its mind. It is in the context of that finding that the Supreme Court made those observations. In the next case, namely *Km. Shradha Devi's* case, the Supreme Court no doubt observed that when a petition is for relief of scrutiny and recount on the allegation of misconduct the petitioner has to offer prima facie proof of errors in counting and if errors in counting are prime facie established, a recount can be ordered. It further observed that if the allegation is of improper rejection of valid votes which is covered by the broad spectrum of scrutiny and recount because of misconduct, petitioner must furnish prime facie proof of such error. If proof is furnished of some errors in respect of some ballot papers, scrutiny and recount cannot be limited to those ballot papers only. I am afraid that these observations cannot be applied to the facts of the present case.

34. Mr. Nadkarni relied upon the decision of *'Arun Kumar Bose v. Mohd. Furkan Ansari & Ors.'* reported in AIR 1983 SC 1311 to point out that non-giving of the serial numbers of the ballot papers has not been faulted with on the ground of lacking material facts. The question had arisen in relation to 74 ballot papers which had not been signed by the Presiding Officer. An allegation was made that para 9(i) of the Election petition lacked any material facts. While dealing with this objection the Supreme Court found that in para 9(i) the number of ballot papers alleged to have been wrongly rejected had been furnished, the counting table number had been given, the booth number had also been disclosed and the ground for rejection had even been pleaded. In the face disclosure of these material facts the Supreme Court observed on facts that non-disclosure of serial numbers of ballot papers cannot be insisted upon.

Mr. Lotlikar, learned counsel for the respondent No. 1 is justified in saying that barring serial numbers all other material facts had been disclosed in the case of Arun Kumar Bose unlike the absence of basic material facts in the present petition.

35. I have also considered the case of small margin involved in the present case. It is well-settled that small margin of votes between the returned candidate and the next best candidate is by itself no ground for directing the recount or inspection. In any case, this small margin in the absence of material facts in violation of the mandate

under Section 83 cannot justify either the recount or inspection in the present case.

36. As a result of the discussion and in the light of the authorities seen the preliminary issues Nos. 1 and 2 are answered in the affirmative in favour of the respondent No. 1. For the same reasons the application dated 10th August, 1990, for inspection of ballot papers is rejected.

The petition is rejected with costs quantified at Rs. 1,200/- Registry to comply with formalities under the Act.

Sd/-.